

and procedures reasonably designed to obtain and retain a record of the essential facts concerning each counterparty whose identity is known to the swap dealer prior to the execution of the transaction that are necessary for conducting business with such counterparty. For purposes of this section, the essential facts concerning a counterparty are:

- (1) Facts required to comply with applicable laws, regulations and rules;
- (2) Facts required to implement the swap dealer's credit and operational risk management policies in connection with transactions entered into with such counterparty; and
- (3) Information regarding the authority of any person acting for such counterparty.

(c) *True name and owner.* Each swap dealer or major swap participant shall obtain and retain a record which shall show the true name and address of each counterparty whose identity is known to the swap dealer or major swap participant prior to the execution of the transaction, the principal occupation or business of such counterparty as well as the name and address of any other person guaranteeing the performance of such counterparty and any person exercising any control with respect to the positions of such counterparty.

(d) *Reasonable reliance on representations.* A swap dealer or major swap participant may rely on the written representations of a counterparty to satisfy its due diligence requirements under this subpart, unless it has information that would cause a reasonable person to question the accuracy of the representation. If agreed to by the counterparties, such representations may be contained in counterparty relationship documentation and may satisfy the relevant requirements of this subpart for subsequent swaps offered to or entered into with a counterparty, provided however, that such counterparty undertakes to timely update any material changes to the representations.

(e) *Manner of disclosure.* A swap dealer or major swap participant may provide the information required by this subpart by any reliable means agreed to in writing by the counterparty; provided however, for transactions initi-

ated on a designated contract market or swap execution facility, written agreement by the counterparty regarding the reliable means of disclosure is not required.

(f) *Disclosures in a standard format.* If agreed to by a counterparty, the disclosure of material information that is applicable to multiple swaps between a swap dealer or major swap participant and a counterparty may be made in counterparty relationship documentation or other written agreement between the counterparties.

(g) *Record retention.* Swap dealers and major swap participants shall create a record of their compliance with the requirements of this subpart and shall retain records in accordance with subpart F of this part and §1.31 of this chapter and make them available to applicable prudential regulators upon request.

§§ 23.403–23.409 [Reserved]

§ 23.410 Prohibition on fraud, manipulation, and other abusive practices.

(a) It shall be unlawful for a swap dealer or major swap participant—

(1) To employ any device, scheme, or artifice to defraud any Special Entity or prospective customer who is a Special Entity;

(2) To engage in any transaction, practice, or course of business that operates as a fraud or deceit on any Special Entity or prospective customer who is a Special Entity; or

(3) To engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative.

(b) *Affirmative defense.* It shall be an affirmative defense to an alleged violation of paragraph (a)(2) or (3) of this section for failure to comply with any requirement in this subpart if a swap dealer or major swap participant establishes that the swap dealer or major swap participant:

(1) Did not act intentionally or recklessly in connection with such alleged violation; and

(2) Complied in good faith with written policies and procedures reasonably designed to meet the particular requirement that is the basis for the alleged violation.

(c) *Confidential treatment of counterparty information.* (1) It shall be unlawful for any swap dealer or major swap participant to:

(i) Disclose to any other person any material confidential information provided by or on behalf of a counterparty to the swap dealer or major swap participant; or

(ii) Use for its own purposes in any way that would tend to be materially adverse to the interests of a counterparty, any material confidential information provided by or on behalf of a counterparty to the swap dealer or major swap participant.

(2) Notwithstanding paragraph (c)(1) of this section, a swap dealer or major swap participant may disclose or use material confidential information provided by or on behalf of a counterparty to the swap dealer or major swap participant if such disclosure or use is authorized in writing by the counterparty, or is necessary:

(i) For the effective execution of any swap for or with the counterparty;

(ii) To hedge or mitigate any exposure created by such swap; or

(iii) To comply with a request of the Commission, Department of Justice, any self-regulatory organization designated by the Commission, or an applicable prudential regulator, or is otherwise required by law.

(3) Each swap dealer or major swap participant shall implement written policies and procedures reasonably designed to protect material confidential information provided by or on behalf of a counterparty from disclosure and use in violation of this section by any person acting for or on behalf of the swap dealer or major swap participant.

§§ 23.411–23.429 [Reserved]

§ 23.430 Verification of counterparty eligibility.

(a) *Eligibility.* A swap dealer or major swap participant shall verify that a counterparty meets the eligibility standards for an eligible contract participant, as defined in Section 1a(18) of the Act and § 1.3 of this chapter, before offering to enter into or entering into a swap with that counterparty.

(b) *Special Entity.* In verifying the eligibility of a counterparty pursuant to

paragraph (a) of this section, a swap dealer or major swap participant shall also verify whether the counterparty is a Special Entity.

(c) *Special Entity election.* In verifying the eligibility of a counterparty pursuant to paragraph (a) of this section, a swap dealer or major swap participant shall verify whether a counterparty is eligible to elect to be a Special Entity under § 23.401(c)(6) and, if so, notify such counterparty of its right to make such an election.

(d) *Safe harbor.* A swap dealer or major swap participant may rely on written representations of a counterparty to satisfy the requirements of this section as provided in § 23.402(d). A swap dealer or major swap participant will have a reasonable basis to rely on such written representations for purposes of the requirements in paragraphs (a) and (b) of this section if the counterparty specifies in such representations the provision(s) of Section 1a(18) of the Act or paragraph(s) of § 1.3 of this chapter that describe its status as an eligible contract participant and, in the case of a Special Entity, the paragraph(s) of the Special Entity definition in § 23.401(c) that define its status as a Special Entity.

(e) This section shall not apply with respect to:

(1) A transaction that is initiated on a designated contract market; or

(2) A transaction initiated on a swap execution facility, if the swap dealer or major swap participant does not know the identity of the counterparty to the transaction prior to execution.

§ 23.431 Disclosures of material information.

(a) At a reasonably sufficient time prior to entering into a swap, a swap dealer or major swap participant shall disclose to any counterparty to the swap (other than a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant) material information concerning the swap in a manner reasonably designed to allow the counterparty to assess:

(1) The material risks of the particular swap, which may include market, credit, liquidity, foreign currency,